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Acting Secretary, U.S. Department of Labor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SETH D. HARRIS,
Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

MICHAEL PENA, an individual; and
LOS GATOS BODY SHOP, INC., a
corporation.

Defendants.

Case No.: C 13-02661 SBA

~~(PROPOSED)~~

CONSENT JUDGMENT & ORDER

Plaintiff, SETH D. HARRIS, Acting Secretary of Labor, United States Department of Labor ("Plaintiff" or the "Secretary"), and Defendants MICHAEL PENA, an in-

dividual; and LOS GATOS BODY SHOP, INC., a corporation (collectively, “Defendants”) have agreed to resolve the matters in controversy in this civil action and consent to the entry of this consent judgment (“Consent Judgment” or “Judgment”) in accordance herewith:

- A. The Secretary has filed a Complaint alleging that Defendants violated provisions of Sections 6, and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (“FLSA” or the “Act”), 29 U.S.C. §§ 206 and 215(a)(2).
- B. Defendants acknowledge receipt of a copy of the Secretary’s Complaint.
- C. Defendants acknowledge their right to retain counsel in this matter.
- D. Defendants waive issuance and service of process and waive answers and any defenses to the Secretary’s Complaint.
- E. The Secretary and Defendants waive Findings of Fact and Conclusions of Law.
- F. Defendants admit that the Court has jurisdiction over the parties and subject matter of this civil action and that venue lies in the District Court for the Northern District of California.
- G. Defendants MICHAEL PENA and LOS GATOS BODY SHOP, INC., and the Secretary agree to the entry of this Consent Judgment without contest.
- H. Defendants MICHAEL PENA and LOS GATOS BODY SHOP, INC., acknowledge that Defendants and any individual or entity acting on their behalf or at their direction have notice of, and understand, the provisions of this Consent Judgment.
- I. Defendants MICHAEL PENA and LOS GATOS BODY SHOP, INC., admit that they violated Sections 6 and 15(a)(2) of the FLSA by consistently failing to pay wages when due to employees. Specifically, Defendants failed to pay employees on or before their regularly scheduled payday 105 out of the 156 workweeks during the period from June 10, 2010, to June 6, 2013 (“the Subject Period”). Such violations of the prompt payment provi-

1 sions of the Act resulted in Defendants paying employees wages at rates
2 less than the applicable federal minimum wage in workweeks when said
3 employees were engaged in commerce and in the production of goods for
4 commerce or were employed in an enterprise engaged in commerce or in
5 the production of goods for commerce, within the meaning of the Act.

6 Therefore, upon motion of the attorneys for the Secretary, and for cause shown,

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to
8 Section 17 of the FLSA, Defendants MICHAEL PENA and LOS GATOS BODY
9 SHOP, INC., their officers, agents, servants, employees, and all persons in active concert
10 or participation with them be, and they hereby are, permanently enjoined and restrained
11 from violating the provisions of the FLSA, in any of the following manners:

- 12 1. Defendants MICHAEL PENA and LOS GATOS BODY SHOP, INC., shall not,
13 contrary to Sections 6 and 15(a)(2) of the FLSA, fail to pay any employee who in
14 any workweek is engaged in commerce or in the production of goods for com-
15 merce or who is employed in an enterprise engaged in commerce or in the produc-
16 tion of goods for commerce, within the meaning of the FLSA, wages for all hours
17 worked on or before the regular payday for the period such workweek ends.
- 18 2. Defendants MICHAEL PENA and LOS GATOS BODY SHOP, INC., and any
19 individual or entity acting on their behalf or at their direction, shall not request,
20 solicit, suggest, or coerce, directly, or indirectly, any employee to return or to of-
21 fer to return to Defendants or to someone else for Defendants, any monies in the
22 form of cash, check, or any other form, for wages that become due to said em-
23 ployee under the provisions of this Consent Judgment or the FLSA; nor shall De-
24 fendants accept, or receive from any employee, either directly or indirectly, any
25 monies in the form of cash, check, or any other form, for wages heretofore or he-
26 reafter paid to said employee under the provisions of this Consent Judgment or the
27 FLSA; nor shall Defendants discharge or in any other manner discriminate, solicit
28 or encourage anyone else to discriminate, against any such employee because such

1 employee has received or retained monies due to him or her from Defendants un-
2 der the provisions of this Consent Judgment or the FLSA.

3 **IT IS FURTHER ORDERED** that for any workweek in which Defendants fail to
4 pay an employee on or before the regularly scheduled payday for all hours worked dur-
5 ing the pay period, Defendants shall, without further intervention from the Court, pay to
6 such employee the unpaid wages for the pay period and an additional amount equal to
7 the late payment as liquidated damages.

8 1. To ensure Defendants' compliance with the provisions of this Consent Judg-
9 ment:

10 a. Commencing on August 1, 2013, and on the first day of the month thereafter
11 for thirty-six (36) months, Defendant MICHAEL PENA shall deliver to the
12 Secretary the name of each current employee, the date and amount of wages
13 paid to each employee during the preceding month, and a copy of all bank
14 statements for the bank account from which the wages were disbursed.

15 b. Within sixty (60) calendar days of entry of this Consent Judgment, Defendant
16 MICHAEL PENA shall deposit \$9,000.00 into a separate bank account as col-
17 lateral in the event Defendants fail to make timely payment of wages. Within
18 48 hours of a missed payroll Defendant MICHAEL PENA shall disburse funds
19 from the bank account to each unpaid employee in the full amount of wages
20 due for hours worked and an equal amount as liquidated damages. The bank
21 account will be maintained solely for this limited purpose, and the deposited
22 funds may only be disbursed to employees owed back wages and liquidated
23 damages as the result of a late payroll. Defendants will replenish the bank ac-
24 count within thirty (30) days of making a disbursement to an employee. De-
25 fendant MICHAEL PENA shall submit a copy of all statements for this ac-
26 count to the Secretary on a monthly basis for twenty-four (24) months.

27 c. All submissions to the Secretary required by this Consent Judgment shall be
28 sent to the following address:

1 Wage and Hour Division
2 United States Department of Labor
3 Attn: Jeremy Reichard
4 90 Seventh Street, Suite 12-100
5 San Francisco, California, 94103

- 6 2. Within thirty (30) calendar days of the date of entry of this Consent Judgment,
7 Defendants shall provide each of their employees with a copy of the notice of
8 rights, attached as **Exhibit A**, which summarizes the terms of this Consent Judg-
9 ment and provides direct guidance from the U.S. Department of Labor regarding
10 employees' rights under the FLSA ("Notice of Rights"). In the event the native
11 language of any employee of Defendants is a language other than English, Defen-
12 dants shall ensure that the Notice of Rights is properly translated into that lan-
13 guage. Within the time period prescribed above, Defendants shall take the follow-
14 ing steps to help ensure that all of Defendants' employees are aware of their rights
15 under the FLSA:
- 16 a. Defendants shall post a copy of Exhibit A in a prominent location at Defen-
17 dants' facility (for example, near the facility's front door, where employees
18 commonly take meal breaks, inside employee restrooms);
 - 19 b. Defendants shall provide a copy of Exhibit A with the first two paychecks for
20 the first two pay periods following entry of this Consent Judgment to all of De-
21 fendants' employees;
 - 22 c. Defendants shall provide a copy of Exhibit A to all newly hired employees be-
23 fore or by the date said employee begins performing work for Defendants at
24 Defendants' facility.
- 25 3. Within ten (10) calendar days of the date that Defendants sign this Consent
26 Judgment, Defendants shall post U.S. Department of Labor-approved posters re-
27 garding the minimum wage and overtime provisions of the FLSA, in a prominent
28 location at Defendants' facility (for example, near the facility's front door, where

1 employees commonly take meal breaks, inside employee restrooms. Copies of
2 said posters are available for download and printing at:

3 <http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>.

- 4 4. Each party shall bear all fees and other expenses (including court costs) incurred
5 by such party in connection with any stage of this proceeding.

6 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action
7 for purposes of enforcing compliance with the terms of this Consent Judgment.

8
9 IT IS SO ORDERED.

10
11 Dated: 6/27/13


United States District Judge

1
2 M. PATRICIA SMITH
3 Solicitor of Labor

4 JANET M. HEROLD
5 Regional Solicitor

6 Dated: June 6, 2013

Cheryl L. Adams
7 CHERYL L. ADAMS
8 Senior Trial Attorney

9 Attorneys for the Complainant
10 United States Department of Labor

11 Defendants hereby appear, waive any
12 defense herein, and consent to the entry of
13 this Judgment.

14
15 Dated: 6/6/2013

[Signature]
16 MICHAEL PENA, Defendant, in his
17 individual capacity and in his capacity as
18 President of Defendant Los Gatos Body
19 Shop, Inc.
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Exhibit A**LEGAL NOTICE TO ALL EMPLOYEES**

The United States Department of Labor conducted an investigation of Michael Pena and Los Gatos Body Shop, Inc., and has determined that your employer has violated the Fair Labor Standards Act ("FLSA") by failing to pay your wages on or before your regularly scheduled payday.

In a settlement with the United States Department of Labor, Michael Pena and Los Gatos Body Shop have voluntarily agreed to pay you on your regularly scheduled payday, and commencing June __, 2013, if they fail to pay you on or before your regularly scheduled payday for all hours worked during the pay period, they will pay you the amount of your missed pay plus an equal amount as liquidated damages

The FLSA provides that all employees must be paid minimum wage for all hours worked. In addition, all employees must be paid the overtime rate of time and one half their regular rate for hours worked over forty (40) in a workweek. All employees are entitled to overtime when they work over forty (40) hours. In addition, employers are required to pay employees promptly and on or before their regularly scheduled payday.

The United States Department of Labor wants to remind you that you may contact the Department if you have any question about your employment situation, such as your classification as an employee (versus independent contractor) and

1 your right to be paid on time and your right to minimum and overtime wages.

2 If you think you are not being paid in accordance with the law, you can call
3
4 the United States Department of Labor, Wage and Hour Division, at (415) 625-7720
5 or 1-866-4-USWAGE (1-866-487-9243), and your name will be kept confidential.

6 The Department wants to remind you that you also have employment rights under
7
8 California state law and you may contact the California Division of Labor Standards En-
9
10 forcement, at (415) 703-5300, for any questions you may have about those rights.